

case, it appears, that there had been a return against Scott, the defendant, attached for not appearing; in consequence of which, on the 30th of March, 1824, the usual order *nisi* was passed, requiring him to appear and answer by the fourth day of the next July Term, which commenced on the thirteenth; and closed on the twenty-fourth day of the same month. Therefore, at any time after the 17th day of July, 1824, the parties might have obtained the decree, which was signed on the 4th of August, 1825.

That they did not obtain it sooner can only be imputed to their own misunderstanding, negligence, or indulgence; because, the Court, on application, would have inspected the proceedings, and have done on the next day, after that day, precisely that which it did, when called upon one year after. The plaintiffs in that case, then, owing to their own negligence or indulgence, stood in no better situation at the July Term, 1825, than they did at the July

**128** \*Term, 1824; because, their decree by default, according to the established practice, was liable to be corrected or revoked during the term at which it was signed. The July Term, 1825, commenced on the 12th of that month, and was not finally closed until the 17th of August following. Consequently, the decree was not final and absolute until that day. After which it could only be opened or affected by an original bill, or a bill of review. The bill to set aside this decree was not filed until the 15th day of November, 1825; and Scott, one of the plaintiffs here, was not charged, on the record of the original case, with a default, which might have been fixed upon him by a decree, until the 18th day of July, 1824, making a space of about fifteen months of apparent negligence, which is to be accounted for, justified or excused. To find which, we must examine the bill and answer in this case.

That the defendant, Scott, in the month of July, 1824, and before he could have been finally fixed with a decree by default, had made an answer, which was ready to be put on file; that he had charged his solicitor with the care of it, who had attempted to forward it to the register, to be put on file; are facts proved and not denied. It also appears, that under a firm belief that his answer had reached its destination, and was on file, his solicitor proposed to the solicitor of the plaintiff, to agree upon some day when the cause should be argued by them. The defendant in this case, Thomas Burch, in his answer, states, that thereupon his counsel wrote for a copy of Scott's answer, and was informed that it had not been filed; which information was shortly afterwards

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general power of the Court, being the same term; and not on the third section of the Act of 1820, ch. 161, which may apply where the term is past. An answer is not therefore required with the appearance, but the suit will stand as if an appearance had been entered in the usual way.